



UNITED STATES DEPARTMENT OF COMMERCE
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MAR 9 2000

In re Reissue Application of
DAVIS et al.
Serial No.: 09/315,796
Filing Date: May 20, 1999
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DECISION ON

PETITION

UNDER 37 CFR 1.181

This is a decision on the petition, filed March 6, 2000, via facsimile transmission, requesting that the Office action of February 8, 2000, be remailed and the time period for reply set therein be reset to run from the date the Office action is remailed.

The petition is **DENIED**.

Petitioner asserts that the Office action was in fact deposited with the United States Postal Service (USPS) on February 9, 2000, rather than February 8, 2000, and was not received by petitioner until March 3, 2000. To support the petition, a copy of the envelope containing the Office action was provided to show a USPS postmark date of February 9, 2000. Petitioner also asserts that petitioner changed business addresses in August 1999 and that the United States Postal Service had been directed to forward all mail to the new business address. Due to the delayed receipt of the Office action at the new business address, petitioner requests that the Office action be remailed and the period for reply reset.

As set forth in MPEP § 710.06, a grantable petition to restart a previously set period for reply to an Office action to run from either (1) the date of receipt of the Office action at the correspondence address or (2) the postmark date shown on the mailing envelope which contained the Office action, must include a showing that satisfies either of the following criteria.

The criteria for item (1) above are:

"(A) the petition is filed within 2 weeks of the date of receipt for reply of the PTO action at the correspondence address;

(B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and

(C) the petition includes (1) evidence showing the date of receipt of the PTO action at the correspondence address (e.g., a copy of the PTO action having the date of receipt of the PTO action

at the correspondence address stamped thereon, a copy of the envelope (which contained the PTO action) having the date of receipt of the PTO action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the PTO action at the correspondence address and explaining how the evidence being presented establishes that the date of receipt of the PTO action at the correspondence address." (emphasis added)

The criteria for item (2) are:

"(A) the petition is filed within 2 weeks of the date of receipt of the PTO action at the correspondence address;

(B) the reply period was for payment of the issue fee, or the reply period was set 1 month or 30 days; and

(C) the petition includes (1) evidence showing address (e.g., copy of the PTO action having the date of receipt at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the PTO action showing the postmark date, and (3) a statement setting forth the date of receipt of the PTO action at the correspondence address and stating that the PTO action was received in the postmarked envelope." (emphasis added)

The evidence of record is insufficient to establish receipt of the Office action at the correspondence address stamped thereon, as required for a grantable petition pursuant to MPEP § 710.06. The evidence reveals that the Office action was properly addressed and mailed to the correspondence address provided in accordance with 37 CFR § 1.33. The evidence also reveals that the Office action was forwarded to a new business address by the USPS rather than received by petitioner at the correspondence address of record, and that the delay in receiving the Office action at the new business address was due, at least in part, to petitioner's failure to promptly notify the Office of a change in correspondence address, as set forth in MPEP § 601.03.

For example, petitioner states:

"Applicant's counsel changed business office addresses but informed the Post Office of the new address; apparently the February 9-mailed action was unreasonably delayed in transit to the post office box, and received only last Friday, March 3, 2000. A 'substantial portion' of the set reply period has therefore run. Our firm changed offices last August, and immediately gave notice to the post office of the address change."

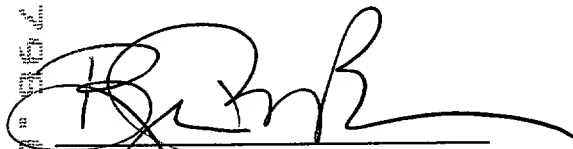
Accordingly, petitioner moved to a new business address in August 1999, more than 5 months before the Office action was mailed, but did not request a change in correspondence address until

the filing of this petition¹. Having forgone the opportunity to update the correspondence address with the Office, petitioner cannot be heard to complain to the Office that the USPS did not diligently forward mail from that now obsolete correspondence address. Rather, because petitioner permitted an obsolete correspondence address to remain of record, petitioner accepted the risk of any delays in the USPS forwarding mail to his new address.

Since petitioner has failed to establish receipt of the Office action at the correspondence address of record, the criteria of neither items (1) nor (2) above have not been satisfied. Furthermore, in view of the fact that the delay in receiving the Office action was due, at least in part, to petitioner's failure to promptly notify the Office of a change in correspondence address, it is inappropriate to grant the relief requested by petitioner. See MPEP §§ 601.03 and 710.06.

Petitioner is reminded that the mere filing of a petition will not stay the period for reply to an Examiner's action (37 CFR 1.181(f)). As such, the time period for reply set forth in the above-noted Office action continues to run 30 days from February 8, 2000. Failure to file a complete and timely response, may result in abandonment of the application.

The application will be held in Technology Center 2800 pending a complete and timely response from applicants.


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¹It is noted that the new correspondence address is different from the address to which the Office action was forwarded by the USPS.